

REMARKS

Provisional election is hereby made, with traverse, to prosecute the invention of Group I, comprising claims 1-6, 11, 13, 14, 18 and 20.

Before considering the merits of the restriction requirement it is noted this Application has already undergone substantive examination. A search of the prior art was conducted, and the first substantive action issued July 26, 2004. While some changes were made to the claims, the requirement that the apparatus include a vaporizer was present in independent apparatus claim 1 that was the subject of the July 26, 2004 Action. Thus, Applicant is perplexed why the Examiner now considers restriction to be necessary.

The restriction requirement is respectfully traversed. The Official Action has not established a *prima facie* justification for the requirement for election. The Official Action states:

In this case the process as claimed can be practiced by another materially different apparatus. For example, the process can be practiced on an apparatus without a vaporizer because the vapor phase can be obtained in a different device independent from the apparatus for depositing the film.

The Examiner's suggestion in this regard is not understood. As noted *supra*, the apparatus claims previously examined required that the apparatus include a vaporizer. Thus, the requirement for restriction at this stage of the examination seems to be purely arbitrary.

In requiring restriction, the Examiner also notes the inventions are classified in different classes and sub-classes, thus alluding to the fact that the inventions would involve divergent fields of search. However, as the Examiner is well aware, such a factor *per se* is not a basis for determining distinctiveness in accordance with MPEP 806. Moreover, as noted *supra*, the

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Examiner has already conducted a substantive search of the apparatus claims in which the apparatus included a vaporizer, and the method claims.

Furthermore, it is respectfully submitted that there is nothing in 35 USC § 121 that gives the Patent Office the authority to require restriction between different statutory classes of claims unless the claims cover "independent and distinct inventions." It is respectfully submitted that the statutory requirements not having been met here vis-à-vis Groups I and II respectively, the Examiner should withdraw the requirement for restriction and provide Applicant with an action on the merits of the withdrawn claims.

It should be noted that restriction requirements as prescribed by 35 USC § 121 are discretionary with the Examiner, and in view of the remarks above, the restriction requirement should be withdrawn.

It is noted the Examiner acknowledges claims 21-28 are linking claims and that these claims may be entitled to examination in the instant application subject to allowance of the elected claims.

In summary therefore, all of the claims are believed to be directed to a single invention. However, so as to be fully responsive, applicant provisionally elects to prosecute Group I, i.e., claims 1-6, 11, 13, 14, 18 and 20, and it is requested that, without further action thereon, the remaining claims be retained in this application pending disposition of the application, and for rejoinder and/or possible filing of a divisional application.

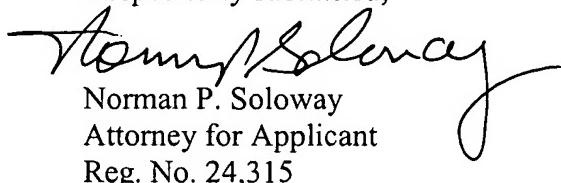
An action on the merits is respectfully requested.

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Respectfully submitted,


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